

August 7, 2001

Dear Medicare+Choice Organization:

On April 27, 2001 the Centers for Medicare & Medicaid Services (CMS) released operational policy letter (OPL 132), which invited employer group or union group health plan waiver requests from Medicare+Choice (M+C) organizations for regulatory provisions that would impact the Adjusted Community Rate proposals (ACRPs). (We will use the phrase “employer group” to refer to both employer and union group health plans.) We are pleased to announce the approval of three categories of employer group waivers: employer-only plans, actuarial swaps, and actuarial equivalence. Each is described below. In addition, CMS will now consider employer group waiver requests that pertain to regulatory requirements other than ACRP provisions, such as marketing and enrollment. Instructions for sending additional waiver requests are discussed at the end of this letter.

Waivers are approved under section 617 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), which provides authority for the Secretary to waive or modify requirements that hinder the design of, the offering of, or the enrollment in M+C plans under M+C contracts with employers and unions.

Approval of Employer Group Waivers

CMS will now allow three categories of employer group waivers.

1. Employer-Only Plans: We will allow M+C organizations to offer employer-only plans (i.e., M+C plans not available to the individual market). M+C organizations should include in their ACRPs for individual plans all beneficiaries, both those with employer coverage and individual coverage.

An M+C organization can establish a unique service area for its employer-only plan (either larger or smaller than the service area of its individual-market plan(s)) in the same area. The M+C organization must ensure that employer group enrollees have reasonable access to providers in order to obtain medically necessary Medicare covered benefits.

Marketing Review for Employer-Only Plans. In conjunction with offering employer group-only plans, many M+C organizations requested that employer group marketing material be exempt from marketing review.

CMS will grant this general waiver for all M+C organizations. Accordingly, M+C organizations will not be subject to the requirements under 42 CFR section 422.80(a) for employer group members; CMS will no-longer pre-approve marketing materials designed for members of M+C organizations’ employer groups. We agree that marketing review can be streamlined by exempting these materials from marketing review.

CMS will assume that M+C organizations have chosen to use this option (i.e., waiver from CMS pre-review of employer group health plan (EGHP) marketing materials) unless we hear otherwise from the M+C organization. All M+C organizations will be required to send informational copies of EGHP-specific marketing materials to the Regional Office that is the lead region for the M+C organization within 14 days of their release/use.

The M+C organization assumes responsibility for the accuracy of the employer group marketing materials, including making any corrections to those materials when necessary. The M+C organization is expected to continue to follow the National Marketing Guidelines when preparing its marketing materials. In the unusual circumstance where an M+C organization knowingly releases or distributes incorrect or false marketing materials, CMS may impose sanctions and or/fines on that organization.

However, CMS will not grant waiver requests to forego the provision of specific information to enrollees, as required by 42 CFR section 422.111. We believe this information is critical for members to completely understand the benefits in a plan, rules for obtaining covered services, and the rights they have as members of the plan. Furthermore, we believe it is harmful to a beneficiary to waive their right to this information.

As set forth in the ACRP instructions released on June 14, 2001, CMS will allow M+C organizations to release/use marketing materials containing 2002 ACRP-related information before the plan's 2002 ACRP has been approved by CMS, as long as the M+C organization follows the procedures outlined in the June 14 memorandum. However, no decision has been made at this time to allow release of pre-approved ACR information after contract year 2002.

2. Actuarial Swaps: M+C organizations can now swap additional benefits of approximately equal value when an employer prefers a benefit package that differs from what the M+C organization offers to the individual market. This allows flexibility for M+C organizations and retains the basic standardized benefit package so beneficiaries can compare their options. However, all M+C plans must cover all Part A and B benefits.

3. Actuarial Equivalence: M+C organizations can raise co-pays for certain benefits but provide a higher benefit level. For example, an M+C organization may offer to the individual market an M+C plan with a \$500 drug benefit and a \$5 co-pay. However, the organization may prefer to offer an employer an unlimited drug benefit but charge a \$10 copay consistent with the employee plan. We will now allow an actuarial equivalence waiver without restriction for both Medicare-covered benefits and additional benefits.

We also received waiver requests to allow M+C organizations to experience-rate employer groups. However, we believe that a waiver is not required as M+C

organizations already have the flexibility to negotiate separate group rates with employers.

Instructions for waiver requests

For those waiver requests already submitted, we will contact the M+CO for additional information. There is no need to resubmit them. Since CMS intends to begin soliciting and acting upon additional requests for waivers on an ongoing basis, we have developed instructions to guide M+COs in making future waiver submissions. Following these instructions will allow CMS to act on waiver requests in a timely manner. The instructions are listed below:

The waiver request must include the name of the M+CO and fully address the following:

- contract numbers affected by the waiver request (or indication that the request applies to all M+C plans nationwide under the M+CO)
- provisions of existing requirements to be waived/modified
- executive summary of the recommended process/modification and rationale
- detailed description of the waiver request including flow charts, details of processes, etc., if applicable
- the problems(s) with the current requirements that are hindering the design or offering of, or enrollment in M+C plans
- how the waiver will remedy the problem(s)
- expected improvements and outcomes for beneficiaries
- how the M+C program, the employer, and/or M+C organization will benefit
- required systems modifications, if applicable
- desired/recommended implementation date
- other details specific to the particular waiver that would assist CMS in the approval of the request
- a general estimate of the burden and/or administrative costs that will be reduced by granting such waiver
- contact person, phone and fax numbers and email address

M+COs should submit waiver proposals electronically to eghpwaivers@cms.hhs.gov. We prefer that proposals be in the form of a Word attachment to e-mail, however, this is not mandatory. CMS may need to contact the M+C Organization for additional information and to discuss issues unique to that request.

Timing of our approval of waiver requests will depend on the number and complexity of waiver proposals we receive.

Please note that CMS could initially reject some waiver requests in favor of including such requests in a Notice of Proposed Rulemaking in order to obtain broader public comment. At the same time, some provisions that we waive could change to non-waivable provisions as a result of the regulatory process.

We will act upon all section 617 employer group waiver requests on an ongoing basis. As we have done for the waivers already approved CMS will announce the availability of new waivers to all M+C organizations.

If you need additional information please send your inquiry eghpwaivers@cms.hhs.gov, or you may contact Tom Hutchinson at 410-786-8953.

We look forward to working with you.

Sincerely,

/ Signed /

Michael McMullan
Acting Director
Center for Beneficiary Choices
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/ Signed /

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